

JUN 28 2011

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United States District Court

For the

Middle District of Pennsylvania

Norman N. Shelton

Plaintiff

"VS"

Case No. 4:11-cv-00368 MJD-DB

Warden Bledsoe et al defendants

Brief in opposition to Defendant's Summary Judgment  
Motion

Now comes Norman N. Shelton, plaintiff herein above entitled case pro-se.

## Statement of the case:

1.) This is a 1983 action filed by a prisoner at U.S.P. Lewisburg S.M.U. Seeking damages, A declaratory judgment, and injunctive relief based on the use of excessive force, and a violation of plaintiff's first and eighth amendment right, the denial of procedural due process and the denial of medical care. Defendants have filed a motion for summary judgment as to the plaintiff's use of force claim against defendants, Heath, Whittaker, Hamilton, Raup, Ditz, Vegh, Trate, Zeider, Perrin, A.W. Hudson, A.W. Young, Bledsoe. Arguing that their conduct did not violate the Constitution.

## Statement of facts:

2.) The plaintiff's declaration submitted in response to the defendant's motion stated that on the morning of August 29, 2010 ~~I~~ stated ~~I~~ was assaulted. That's a fabrication of the truth and a lie to deceive this honorable Court with their lies. ~~I~~ was attacked and assaulted on August 30, 2009, and again on Nov. 26, 2009, by two different inmate and gang related members of the bloods and Crips, and the officers of S.M.U.

3.) Defendants subjective evidence "they knew" plaintiff was being deprived and did not respond reasonably. Un-just treatment and malicious acts directed towards plaintiff from defendants supervisors. Defendants Affidavit states plaintiff's claim is frivolous with no genuine issues another lie to deceive this honorable court with their lies.

## Argument point (1)

"There are genuine issues of material facts that preclude summary judgment for the defendant's on the plaintiff's use of force and Violation of first an eighth amendment.

A.) Summary judgment is to be granted only if the record before the court shows that there is no genuine issue as to any material facts and that the moving party is entitled to a judgment as a matter of law. "Rule 56(c), Fed. R. Civ. P. A material fact is one that "might affect the outcome of the suite under the governing law." *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248 (1986).

B.) The affidavits of the plaintiff and the defendants are squarely contradictory as to what force was used, when it was used and why it was used along with the violations of plaintiff's first an eighth amendment rights. "The allegations in the plaintiff's affidavit portray a completely needless use of force against a inmate by forcing him against his will to live with a gang member who attacked and assaulted him for a whole three minutes while staff stood there in watched and

(2)

c.) Did nothing to stop it. The factual dispute is also material. Under governing law, whether the use of force by prison staff violates the eighth amendment depends on whether it was "applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically to cause harm." *Hudson v. McMillian* — U.S. — 112 S.Ct 995, 998-99 (1992) *Whitley v. Albers* 475 U.S. 312, 320-21 106 S.Ct 1078 (1986) The facts alleged by the plaintiff are evidence that the defendants were acting. "Malicious and sadistically to cause harm." They would support a jury verdict in the plaintiff's favor. See *Miller v. Leathers*, 913 F.2d 1085, 1088 (4<sup>th</sup> Cir 1990) (en banc) (retaliatory intent could be inferred from officer's action.) cert. denied, 111 S.Ct 1018 (1991); *Oliver v. Collins*, 914 F.2d 56, 59, (5<sup>th</sup> Cir 1990) (testimony that a beating was completely gratuitous and that no force at all was necessary would support a finding of malice). *Lewis v. Downs*, 774 F.2d 771, 774 (6<sup>th</sup> Cir 1985) (evidence that an officer kicked a handcuffed person who was lying on the ground showed malicious motivation).

### Conclusion:

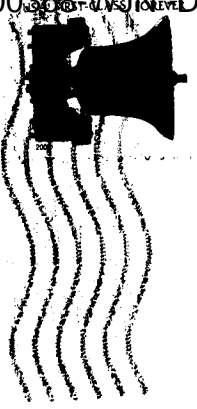
For the foregoing reason, the defendants' motion for summary judgment should be Denied.

Dated 6/26/11  
 Norman A. Shelton #45969-066  
 U.S.P. Lewisburg  
 P.O. Box 1000  
 Lewisburg Pa 17837

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HARRISBURG PA 171

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